

Application No. 10/667,007
Preliminary Amendment dated January 13, 2006
Reply to Office Action of April 7, 2006
Docket No. P-5655/3 (102-490)
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REMARKS

Reconsideration of the application is respectfully requested.

Claims 1, 2, 4-10 and 12-21 are in the application.

In the Official Action, the Examiner indicated that the previously-submitted Declaration under 37 CFR §1.131 is insufficient to overcome Bloom et al. (U.S. Published Patent Application No. 2004/0108294). The Examiner stated that "the attachment of the drawing is unclear and insufficient evident [sic] for establishing the conception of the claimed invention." Attached hereto are better quality copies of the drawings. If the quality of the drawings is still poor, Applicant is willing to provide clean copies directly to the Examiner which avoid scanning. It is respectfully submitted that the Declaration is sufficient to overcome the Bloom et al. reference.

The Examiner rejected claims 1, 2, 4-7 and 12-21 under 35 U.S.C. §102(e) as being allegedly unpatentable over Bloom et al.

Bloom et al. is directed to a plastic closure 26 which includes a closure shell 28, a liner disk 30 and a sealing liner 32. As shown in Figures 2 and 10, the closure shell 28 includes a base wall 34 having a flat surface facing the liner disk 30.

Claim 1, the only independent claim of the subject application, is directed to a cap assembly including "a cap body having a top wall" with "an orifice formed in said top wall"; "a plug seal attached to said orifice"; and, "at least one projecting ring being located on an undersurface of said top wall of said cap body for engagement with said plug seal". In contrast to claim 1, Bloom et al. does not have at least one projecting ring on the undersurface of the top wall of the cap body. Rather, the undersurface of the base wall 34 of the closure shell 28 is flat. Moreover, there is no disclosure or suggestion to modify the undersurface to include a projecting

ring. It is respectfully submitted that claim 1, along with depending claims 2, 4-7 and 12-21, are patentable over Bloom et al.

The Examiner rejected claims 1, 2, 4, 5, 7, 12-17, 19 and 21 under 35 U.S.C. §103(a) as being allegedly unpatentable over Riera (U.S. Patent No. 3,499,568) in view of Doi (U.S. Patent No. 4,880,127).

The Examiner admitted that “Riera does not disclose at least [sic] projecting ring being located on an under surface of the top wall of the cap body for engagement with the plug seal” and relied on Doi for allegedly overcoming this deficiency. Specifically, the Examiner asserted that “it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide in the Riera invention with a projecting ring located on an undersurface of the cap body for engagement with the plug seal, as taught by Doi, in order to facilitate of air venting for the cap.”

Riera is directed to a stopper system for biological containers which includes a locking cap 1, an elastic stopper disk 2 and a protective capsule 3. The cap 1 includes a circular central aperture 9 with a lower projection 10. (Fig. 2). The elastic stopper disk 2 includes an upper part 14 “designed for fitting on the cap 1 by application on its central aperture 9, with a circular grove 15 in correspondence with the projection 10.” (Col. 2, ll. 44-46). In assembling the stopper system, the stopper disk 2 is first placed on the neck 12 of the container followed by the cap 1 being threaded onto the neck 12. (Col. 3, ll. 20-24). As result, the upper part 14 of the disk 2 is passed through the aperture 9 until it is fitted into the aperture 9, as shown in Fig. 3. (Col. 3, ll. 24-27). As shown in the Figures, the upper part 14 fits tightly within the aperture 9. (See, also, col. 3, ll. 41-43 (“said upper projecting means of the elastic stopper being adapted to fit tightly in said central aperture [of the locking cap]”)).

Doi is directed to a composite vessel lid including an outer lid 1 and an inner lid 20. Inner lid 20 is supported by holding projections 7 of the outer lid 1, as shown in Fig. 4. (Col. 3, ll. 38-41). Projections 30 may also be formed on the outer lid 1 to define gas paths 31. (Col. 4, ll. 3-4; Fig. 3). The gas paths 31 allow for venting from a mouth of the container 40, as shown in Fig. 4. (Col. 4, ll. 5-16). In Doi, and as shown in Fig. 4, escaping gases pass over the lip of the container, around the outer edge of the inner lid 20, and through the gas paths 31 (between the projections 30). Doi provides projections 30 to define gas paths 31, with gas passing through the gas paths 31 escaping through the orifice defined in the outer lid 1.

With Riera, the elastic stopper disk 2 is coupled to the locking cap 1 in the aperture 9. As indicated above, a tight engagement is defined between the elastic stopper disk 2 and the locking cap 1. Although Riera defines an aperture 9 in the locking cap 1, there is no gas flow path between the locking cap 1 and the elastic stopper disk 2. Accordingly, one skilled in the art would not be motivated to provide the projections of Doi on the locking cap of Riera. With the Examiner's hypothetical combination, the gas paths 31 defined by the projections 30 would be blind passageways with no provision for gas to escape through the aperture 9. Rather, gas would vent through the bottom of the locking cap 1. Accordingly, the gas paths 31 would serve no purpose in the Riera device, and there is no desirability to modify the Riera device as suggested by the Examiner. See MPEP §2143.01(III) ("The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination."). It is respectfully submitted that there is no *prima facie* showing of obviousness based on the Riera and Doi references and, accordingly, claims 1, 2, 4, 5, 7, 12-17, 19 and 21 are patentable over Riera and Doi, each taken alone or in combination.

Claim 6 was rejected under 35 U.S.C. §103(a) as being allegedly unpatentable over Riera in view of Doi and further in view of Venooker et al. (U.S. Patent No. 5,586,673). The Examiner asserted that "it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the plug seal of the Riera [device] with the flanges being

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a discontinuous annular ring, as taught by Venooker, in order to facilitate of inserting the plug seal to a central [orifice] of a cap body.”

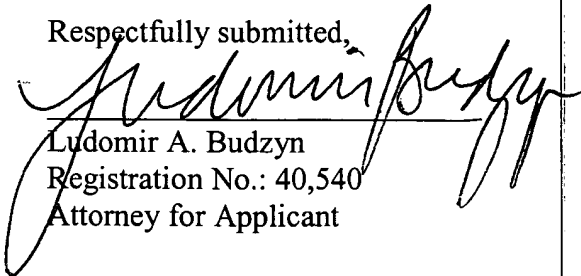
Claim 6 depends from claim 1. Venooker et al. does not overcome the deficiencies of Riera and Doi discussed above. Accordingly, it is respectfully submitted that claim 6, as depending from claim 1, is also patentable.

The Examiner rejected claims 7-10 under 35 U.S.C. §103(a) as being allegedly unpatentable over Riera in view of Doi and further in view of Luenser et al. (U.S. Patent No. 4,462,502) or McIntosh (U.S. Patent No. 4,423,821). The Examiner admitted that neither Riera nor Doi “disclose the plug seal including an annular groove and the top wall of the cap body including a projection to be received in the groove.” The Examiner cited Luenser et al. or McIntosh for overcoming this deficiency.

Luenser and McIntosh are each directed to a closure with a liner. However, neither reference overcomes the deficiencies noted above of Riera and Doi. With claims 7-10 depending from claim 1, it is respectfully submitted that claims 7-10 are also patentable.

Favorable action is earnestly solicited. If there are any questions or if additional information is required, the Examiner is respectfully requested to contact Applicant’s attorney at the number listed below.

Respectfully submitted,


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